

S	E	R	V	E	D
February 4, 2015					
FEDERAL MARITIME COMMISSION					

FEDERAL MARITIME COMMISSION

DOCKET NO. 1945(F)

OKOYE CHRISTIAN OGOCHUKWU

v.

EMEKA ONYECHI d/b/a DONEM INTERNATIONAL, LLC

SECOND ORDER TO SUPPLEMENT THE RECORD

Commission Rules provide that in a Subpart T proceeding, the “administrative law judge may require the submission of additional affidavits, documents, or memoranda from complainant or respondent.” 46 C.F.R. § 502.314. Pursuant to this authority, the parties are **ORDERED** to supplement the record by responding to the following questions and producing the requested documents to the best of their ability. Responses to the questions must be made under oath before a notary public or by declaration subject to the penalties for perjury. *See* 28 U.S.C. § 1746.

An original and five copies of the responses to the questions and any accompanying documents must be filed with the Secretary, Federal Maritime Commission, 800 N. Capitol Street, NW, Washington, DC 20573-0001. *See* 46 C.F.R. § 502.321(b) and 46 C.F.R. § 502.2(c) (Commission rules for filing documents). The parties are advised that regular mail to the Commission is often delayed and occasionally damaged by security precautions; accordingly, the parties are encouraged, but not required, to send filings to the Secretary by overnight delivery service. In addition, the filing party may send the document electronically to the Commission at the following email addresses: secretary@fmc.gov and judges@fmc.gov. At the time of filing, a copy of the responses and documents must be served on the other party as required by 46 C.F.R. § 502.320.

In addition to serving the order in PDF form, the Commission is providing the parties with a word processing version of this Order to facilitate the process of answering the questions. In addition to the signed hard copy of their responses, the parties are ordered to send word processing versions of their responses to the Office of Administrative Law Judges at judges@fmc.gov and to each other.

On or before February 20, 2014, complainant Okoye Christian Ogochukwu is **ORDERED** to file and serve responses to the following questions and file and serve the requested documents.

- I. In response to Question to Complainant 2.C in the Initial Order, Complainant states: "I, Ogochukwu initially discussed with the Respondent to ship the equipment by air freight. However, Respondent later advised me that after packaging the equipments the weight was more than he anticipated and that the cost of shipping by air freight will be more than what he already charged. Therefore, Respondent will now ship the equipments by Ocean shipping." (Claimant's Supplemental Responses 2.C.) Complainant also states that Respondent "claimed to have shipped it [by water] rather than cargo [by air] based on our agreement." (Claimant's Supplemental Responses, Exhibit C.) In its response, Respondent states that it "discussed shipping the equipment by Air with Obioma Ukegbe." (Supp. Resp. by Respondent, rebuttal to Claimant's Supplemental Responses 2.C.)
 - A. When did Complainant engage in discussions with Respondent about shipping the equipment by air freight? State the date(s), time(s), and substance of each conversation, method of communication, and identify and file copies of any communication record showing the date and time of communication and/or documents showing the substance of the discussions, if any exist.
 - B. State all the terms of the alleged agreement to transport the cargo by air alleged in Exhibit C, including the date on which the parties reached the agreement, identity of the shipper, the consignee, air carrier, and the cost of the shipment. Identify and file copies of all documents related to the agreement, if any exist.
 - C.
 1. When did Respondent advise Complainant that "after packaging the equipments the weight was more than he anticipated and that the cost of shipping by air freight will be more than what he already charged"?
 2. What was the cost already charged and what new charge, if any, was quoted?
 3. Identify and file copies of any communication record showing the date and time of communication and/or documents showing the substance of the discussions, if any exist.
2. Complainant states: "Respondent then gave me a quote later on how much transporting the equipment by air freight will be. It was based on the quote by Respondent that I sent Respondent a check of \$1,330.00 to air freight the equipments to Nigeria." (Claimant's Supplemental Responses 2.C.)
 - A. Does Complainant allege that \$1,330.00 was the total cost quoted by Respondents to transport the nine pieces of equipment to Nigeria by air freight, the cost to transport Complainant's five pieces of equipment to Nigeria by air freight, or some other portion of the transportation cost?

3. In response to Question to Complainant 2.E in the Initial Order, Complainant states: "The medical equipment was never transported to Nigeria" (Claimant's Supplemental Responses 2.E.) In its rebuttal, Respondent states that the equipment was transported to Nigeria and "Obioma [Ukaegbe] informed [Complainant] multiple times to pay up the storage balance to enable their representative in Nigeria pick up the remaining 5 equipment." (Supp. Resp. by Respondent, rebuttal to Claimant's Supplemental Responses 2.E.)
- A. Was the medical equipment transported to Nigeria?
 - B. If so, was it transported by air or by water?
 - C. If transported by water, identify the shipper and the consignee, identify all vessel-operating common carriers, non-vessel-operating common carriers, and ocean freight forwarders involved in the shipment, and identify and file copies of all bills of lading and other shipping documents related to the shipment, if they exist.

4. In response to Question to Complainant 3.B in the Initial Order regarding Complaint Exhibit 2, Complainant states:

I faxed one authorization copy to the VA Medical Center, New Jersey with a misspelled name DONEE CARGO, INC., instead of DONEM INTERNATIONAL, LLC. One authorization copy was sent by fax to a fax number provided by the Respondent. One authorization copy was forwarded to Obioma via email because Obioma owns 4 of the equipments.

(Claimant's Supplemental Responses 3.B.) In its rebuttal, Respondent states:

Complainant . . . needs to provide a proof that any document was sent directly from him to Respondent, but there was no such thing. . . . [The] only authorization I received was emailed to me by Obioma [Okeagbe] and the authorization was for pick up purpose of VA Medicals only. . . . Faxed items also have Transmission Verification Report, which will include the date and time of the fax.

(Supp. Resp. by Respondent, rebuttal to Claimant's Supplemental Responses 3.B.)

- A. Identify and file copies of any documents demonstrating that Complainant faxed Complaint Exhibit 2 to Respondent or delivered it to Respondent by some other means.
5. In his supplemental response, Respondent states: "Christian Okoye (Complainant) later called to inform me that they needed some time for him to sort himself out financially because his wife had just had a baby and that he could [sic] not be able to pay for the transportation at that moment." (Supp. Resp. by Respondent, Response 5.)

- A. Did Complainant and Respondent have a conversation in which Complainant informed Respondent that Complainant's wife had just had a baby and that he would not be able to pay for the transportation at that time?
 - B. If so, when did the conversation occur? Identify and file with the Commission copies of any documents related to the conversation, if any exist.
6. The GSA Purchaser's Receipt to Bidder shows that Complainant purchased nine pieces of equipment for \$3027. (Claimant's Supplemental Responses, Exhibit B.) Complainant alleges that Obioma Okeagbe purchased four pieces from Complainant for \$1,245.33 (Claimant's Supplemental Responses 2.B), which is four-ninths of the purchase price.
 - A. Was the purchase price for the five pieces of equipment for which Complainant retains ownership \$1,781.67?

On or before February 20, 2015, respondent Emeka Onyechi d/b/a Donem International, LLC is **ORDERED** to file and serve responses to the following questions and file and serve the requested documents.

1. Respondent alleges the following facts:
 - Respondent picked up nine pieces of medical equipment from VA in July 2013 and stored them in his facility in New Jersey until December 18, 2013. (Supp. Resp. by Respondent, rebuttal to Claimant's Supplemental Responses 2.D.)
 - "The equipment were picked up by another shipping company I contracted on their behalf around December 19, 2013, the shipping vessel with those equipment sailed sometime in January 2014." (Supp. Resp. by Respondent Exhibit 12 – message dated February 25, 2014, from Donem to BBB.)
 - On December 18, 2013, "Ralph Attah picked the equipment for onward forwarding to Nigeria." (Supp. Resp. by Respondent, Respondent Question 9; Supp. Resp. by Respondent, Exhibit 4.)
 - "\$2,400 was charged for both pick-up, shipping and clearing of the 9 equipment which was transferred to Ralph Attah including the \$1330 that the Complainant deposited into Respondent's account. Cash of \$1900 was given to him at the time of pick up and we agreed that the balance of \$500 will be paid upon collection in Nigeria. This arrangement was made with the anticipation that Respondent's storage charges must have been satisfied before the items get to Nigeria as promised by Obioma Ukegbe. (Please refer to Exhibit # 4)"
 - On April 3, 2014, nine pieces of medical equipment were picked up in Nigeria from BobbyRalph Ventures Nig. Ltd. and stored in Respondent's facility in Lagos, Nigeria. (Supp. Resp. by Respondent, Exhibit 7.)
 - On May 3, 2014, Obioma Ukaegbe's consignee picked up four pieces of equipment from Respondent's storage facility in Lagos, Nigeria. (Supp. Resp. by Respondent, Respondent Question 10; Supp. Resp. by Respondent, Exhibit 6.)

- Five pieces of medical equipment are stored in Respondent's facility in Lagos, Nigeria. (Supp. Resp. by Respondent, Respondent Question 10.)
 - A. Identify the shipper, the consignee, and all vessel-operating common carriers, non-vessel-operating common carriers, and ocean freight forwarders involved in the transportation of the equipment from the United States to Nigeria, and identify and file copies of all bills of lading and other shipping documents related to the shipment, if any exist.
 - B. Describe Respondents' activities when it contracted with another shipping company on behalf of Complainant and Okeagbe to ship the equipment by water to Nigeria.
 - C. Did Respondent give \$1900 in cash to Attah? From whom and when did Respondent obtain the \$1900? Identify and file copies of any documents showing the source or sources of the \$1900 and the transfer to Attah, if any exist.
 - D. Why was the equipment delivered to Respondent's storage facility in Lagos, Nigeria? Identify and file copies of all documents related to the delivery, if any exist.
- 2. In his supplemental response, Respondent states: "Respondent did negotiate with Obioma Ukaegbe about transporting the medical equipment to Nigeria through Air Freight. . . . [Complainant] later called to inform me that they needed some time for him to sort himself out financially because his wife just had a baby and that he could not be able to pay for the transportation at that moment." (Supp. Resp. by Respondent, Response 5.) Respondent also states: "Obioma was told by Respondent to either arrange for the equipment to be picked up from Respondent's facility or give Respondent go ahead order to crate and ship the equipment through Air Cargo. Obioma was also informed during phone conversation with the Respondent that our storage charge of \$5/day on each skid has been accumulating on those equipment." (Supp. Resp. by Respondent, Response 7.)
 - A. When did the negotiations take place?
 - B. What were the terms discussed?
 - C. Identify and file with the Commission any documents setting forth the terms of any agreement to transport the equipment by air, including any notes of the negotiations made by Respondent, if any exist.
 - D. When did Respondent tell Obioma about the \$5 per day per skid storage charge?
 - E. When Complainant called to inform Respondents that he would not be able to pay for the transportation at that time, what if anything did Respondent tell Complainant about storage charges?

3. In his supplemental response, Respondent states:

After picking up the equipment from VA Medicals in NJ, Obioma [Okeagbe] was informed that those equipment need to be crated before chargeable weight can be determined. Obioma was also informed that he will also be responsible for the crating charges, it was at that juncture that he said he will need to contact his partner/friend before they can give me a go ahead order to Air freight the equipment.

(Supp. Resp. by Respondent, Response 5.)

- A. When did the conversation with Obioma Okeagbe occur?
- B. Identify and file with the Commission copies of any documents related to the conversation, if any exist.
4. In his supplemental response, Respondent states: "Christian Okoye (Complainant) later called to inform me that they needed some time for him to sort himself out financially because his wife had just had a baby and that he could [sic] not be able to pay for the transportation at that moment." (Supp. Resp. by Respondent, Response 5.)
- A. When did the conversation with Complainant occur?
- B. Identify and file with the Commission copies of any documents related to the conversation, if any exist..
5. Exhibits E and F attached to Complainant's Supplemental Responses appear to be web pages for advertising for Donem International Shipping and Courier. The pages are marked "Copyright 2009 Donem International Shipping and Courier." Among other information, the exhibits state the following:
- As one of the leading freight forwarders in the United States, you can always rely on Donem's first class shipping services at very competitive rates to ensure the fastest connection of your shipments by Air/Sea from Unites States to Africa and beyond.
 - By virtue of our exclusive agreements and commitments with leading carriers in both Air and Sea, we enjoy special rates on all of our shipments and confirmed space in every booking which we will pass to you to guarantee a speedy and hassle-free delivery.
 - Donem's Worldwide Ocean freight services include:
 - Direct pick of container from any location, factory, warehouse, home etc.
 - Frequent sailing with most reliable shipping lines
 - Efficient custom clearance and forwarding

- Roll on and Roll Off services
 - L.C.L. Consolidation
 - F.C.L. Consolidation
- A. Are exhibits E and F fair and accurate copies of Donem's web pages?
- B. When did Donem first use the web pages in exhibits E and F in its Internet advertising? Does Donem continue to use this advertising? If not, when did it stop?
- C. What "Worldwide Ocean freight services" was Donem advertising?
- D. What is the purpose of the "applicable links to start tracking" with Maersk Line, ACL, and MSC Shipping on Exhibit F?
6. Respondent states: "Obioma [Okeagbe's] consignee in Nigeria has picked up one skid of 4 medical equipment, remaining 1 skid of 4 plus extra piece making 5 medical equipment are still stored in Respondent's facility in Lagos Nigeria awaiting pick up as soon as storage charges are satisfied." (Supp. Resp. by Respondent – Response 10.)
- A. Explain how and why the equipment was delivered to Respondent's storage facility in Lagos, Nigeria.
- B. Identify and file with the Commission copies of all documents relating to the delivery and storage of the equipment in Respondent's storage facility in Lagos, Nigeria, if any exist.

On or before March 6, 2015, each party may offer rebuttal to the other party's assertions filed in response to this Order. The rebuttal should restate each assertion, then set forth the rebuttal immediately below.



Clay G. Guthridge
Administrative Law Judge